



# Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

info@southernshores-nc.gov

www.southernshores-nc.gov

## **RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA ADOPTING ATTORNEY-CLIENT PRIVILEGE POLICY (Resolution #2009-11-02)**

**WHEREAS**, the attorney-client privilege as interpreted by the Courts of North Carolina and the United States of America represents a fundamental protection of the clients of attorneys such as the Town of Southern Shores; and

**WHEREAS**, The Town Council finds that best interests of the Town and citizens of the Town can, in most cases, be best served by preserving the attorney-client privilege to the fullest extent possible; and

**WHEREAS**, the attorney-client privilege may only be waived by the client; and

**WHEREAS**, the Town Council of the Town of Southern Shores does not want to waive the attorney-client privilege inadvertently or without careful deliberation and good reason; and

**WHEREAS**, the Town Council of the Town of Southern Shores recognizes that North Carolina Public Records Act codified in N.C.G.S. 132-1 et seq., the North Carolina Open Meetings Law codified at N.C.G.S. 143-318.9 et seq. and other similar laws may require production from time to time of materials that could be subject to the attorney-client privilege; and

**WHEREAS**, the Town Council wishes to comply with and abide by the provisions of the North Carolina Public Records Act codified in N.C.G.S. 132-1 et seq., the North Carolina Open Meetings Law codified at N.C.G.S. 143-318.9 et seq. and other similar laws, and adopts this Resolution for that purpose.

**NOW, THEREFORE BE IT RESOLVED**, the Town Council hereby adopts the following policy with regard to waiver of the Town's attorney-client privilege:

1. The Town's attorney-client privilege shall not be deemed waived absent an affirmative vote by a majority of the Town Council to expressly waive the privilege made in open or closed session at a duly held meeting of the Town Council.
2. Any waiver of the Town's attorney-client privilege pursuant to such a vote shall be deemed to waive the privilege to the narrowest extent possible and only with respect to the precise subject matter or information for which the privilege is expressly waived.
3. Disclosure of information subject to the attorney-client privilege by the Town's council members, officials, employees, agents, independent contractors or attorneys shall not be deemed a waiver of the Town's attorney-client privilege unless expressly waived in the manner required by this policy.
4. Without further action of the Town Council, the Town Attorney or the Town Clerk, in consultation with the Town Attorney, may disclose any information when reasonably required to do so pursuant to any act of the North Carolina General Assembly, including, but not limited to the North Carolina Public Records Act and North Carolina Open

Meetings Law, the United States Congress or any other legislative or rule making body to which jurisdiction the Town is subject so long as the Town Attorney reasonably believes that doing so will not materially prejudice the Town in any ongoing or future litigation, negotiation or other legal matter.

5. Without further action of the Town Council, the Town Attorney or the Town Clerk, in consultation with the Town Attorney, may disclose any information when reasonably required to do so pursuant to the order of any court of competent jurisdiction so long as the Town Attorney reasonably believes that doing so is required to comply with said order.
6. Even if disclosed pursuant to an affirmative vote of the Town Council the disclosure of information subject to the attorney-client privilege shall not be deemed a waiver of the attorney-client privilege unless expressly waived in the manner required by this policy if such disclosure was made pursuant to any act of the North Carolina General Assembly, including, but not limited to the North Carolina Public Records Act and North Carolina Open Meetings Law, the United States Congress or any other legislative or rule making body to which jurisdiction the Town is subject or pursuant to the order of any court of competent jurisdiction.
7. A certified copy of this signed resolution may be submitted at any trial or other proceeding, and may be used to foster an objection by the Town to the consideration, introduction or admission of any information subject to the attorney-client privilege unless the party opposing the Town's objection proves that the privilege has been expressly waived in the manner required by this policy.
8. This policy applies retroactively to all prior disclosures of information subject to the attorney-client privilege by the Town's officials, employees, agents, independent contractors or attorneys unless the privilege has been expressly waived in the manner required by this policy.
9. This policy shall be construed so as to waive the Town's attorney-client privilege to the least extent possible.
10. If any word, phrase, language, section or other portions of this policy are held invalid by a court of competent jurisdiction, then all remaining words, phrases, language, sections or other portions of this policy shall remain in full force and effect.
11. Any and all other policies previously adopted by the Town which are inconsistent with this policy are hereby revoked.

Adopted this 4<sup>th</sup> day of November 2009.

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Brian McDonald, Mayor pro tem

Attest:

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Carrie Gordin, Town Clerk